

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE: ROBERTO RICO DURAN	§	
	§	
	§	CASE NO: 2:18-MC-00058
	§	
	§	

**PETITIONER MARIA BLANCA GOMEZ ARELLANO'S
VERIFIED PETITION TO PERPETUATE TESTIMONY**

Petitioner, Blanca Gomez Arellano, respectfully requests permission from this Court to depose by oral examination Roberto Rico-Duran for the purpose of perpetuating his testimony for use in an anticipated suit as authorized by Federal Rule of Civil Procedure 27.

I. BACKGROUND

1. Petitioner, Maria Blanca Gomez Arellano, is the mother of Martin Gomez Arellano. Martin Gomez Arellano died inside a tractor-trailer allegedly driven by Juan Enrique Escobedo-Moreno after the tractor-trailer was impounded by United States Customs and Border Protection agents at the Border Patrol checkpoint near Falfurrias, Texas, in October 2017. Mr. Escobedo-Moreno has been charged with a number of crimes related to this incident. *See United States v. Juan Enrique Escobedo-Moreno*, Case no. 2:17-CR-677-1, S.D.Tex.—Corpus Christi Division, filed October 25, 2017 (Magistrate case 2:17-MJ-01015).

2. Mr. Rico-Duran was found inside the same tractor-trailer, and has been held in custody as a material witness in the criminal action against Mr. Escobedo-Moreno.

3. Petitioner is anticipating a civil action against United States Customs and Border Protection (CBP) under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 2671-2680, and seeks to perpetuate the testimony of Mr. Rico-Duran for use in that action. Fed. R. Civ. P. 27.

II. JURISDICTION

4. The Court has jurisdiction over this petition. This Court has subject matter jurisdiction over the anticipated litigation pursuant to 28 U.S.C. §1331 in that the action arises under the laws of the United States of America and is premised on the acts and omissions of the United States acting under color of federal law. This court further has subject matter jurisdiction pursuant to 28 U.S.C. §1346(b) because the claim is against the United States of America for money damages that accrued after January 1, 1945 for a death caused by wrongful or negligent acts and omissions of United State's employees while acting within the course and scope of their employment, and under the same or similar circumstances, a private person would be liable to Petitioner.

5. As required by Federal Rule of Civil Procedure 27, Petitioner attaches a declaration verifying the facts within her personal knowledge that form the basis of the anticipated claims.

III. ARGUMENT

6. On or about October 3, 2017, CBP impounded a tractor-trailer at the Falfurrias checkpoint, in Brooks County, Texas. The vehicle was impounded after agents discovered an undocumented man inside the interior sleeping compartment, who was later identified as Mr. Rico-Duran. The driver and undocumented man were both taken into custody.

7. On or about October 6, 2017, CBP agents contacted the Brooks County Sheriff's Office to investigate a suspicious liquid leaking from the rear compartment of the tractor-trailer. Upon investigation, Martin Gomez Arellano's body was discovered inside the tractor-trailer.

8. Petitioner anticipates that she will be a party to a lawsuit pursuant to the FTCA involving negligence and other wrongful acts by anticipated Defendant United States of America resulting in Mr. Gomez Arellano's death.

9. Petitioner cannot bring the suit at this time due to ongoing factual investigation and the requirement under the FTCA to first exhaust an administrative remedy with the agency in question (CBP in this case), a process that can take up to six months.

10. Petitioner's interest in the anticipated suit is as the next of kin plaintiff and beneficiary of any recovery against the United States.

11. Petitioner has not brought or been a part to a suit that arises out of the facts that are the subject of this petition.

12. The following persons (among others who remain unidentified at this time) may have an interest adverse to petitioner in the anticipated suit: United States of America, Department of Homeland Security, United States Customs and Border Protection, and their agents and employees.

IV. REQUEST TO DEPOSE

13. Petitioner asks the Court to issue an order authorizing her to examine the following person by oral deposition:

Roberto Rico-Duran
c/o Jeanette Cantu Bazar
Prosperity Bank Bldg.
500 N. Water Street, Suite 620
Corpus Christi, Texas 78401
361-882-1559
361-882-1895 Fax
cantubazar@att.net

14. Attorney Cantu-Bazar has been appointed to represent Mr. Rico-Duran as material witness in the criminal case against Mr. Escobedo-Moreno, 2:17-CR-677-1, currently pending before this Court.

15. Petitioner expects to elicit the following testimony from Mr. Rico-Duran:

- a) Testimony regarding Mr. Gomez Arellano's presence inside the sleeping compartment of the tractor-trailer driven by Mr. Escobedo Moreno.
- b) Testimony regarding Mr. Gomez Arellano's location within the tractor-trailer.
- c) Testimony regarding Mr. Gomez Arellano's physical condition prior to Mr. Rico-Duran's seizure by Customs and Border Protection officers, including the last time Mr. Rico-Duran saw Mr. Gomez Arellano alive.
- d) Testimony regarding the search and inspection, or lack thereof, of the tractor-trailer conducted by United States Customs and Border Protection agents.
- e) Testimony regarding any interrogations and/or conversations between Mr. Escobedo-Moreno and/or Mr. Rico Duran and Border Patrol agents.
- f) Testimony regarding the location where the tractor-trailer departed from in South Texas, and related information.

16. Petitioner seeks to perpetuate the testimony of this witness because Mr. Rico-Duran, a Mexican national, is at risk of being subject to deportation after the conclusion of the criminal case for which he is a material witness, and therefore will likely not be available for the trial of Petitioner's anticipated action.

17. On January 4, 2018, Mr. Rico-Duran, through his attorney, requested that his deposition be taken in the context of the criminal case for which he is a witness, so that he can be

released from custody. *USA v. Escobedo-Moreno*, 2:17-CR-677-1, S.D.Tex, Dkt. No. 35, January 4, 2018. The Court denied this request.

18. Petitioner intends to file an advisory in that criminal action immediately after filing this petition, so that the court may be aware of Petitioner's request.

V. CONCLUSION

19. Petitioner Maria Blanca Gomez Arellano requests permission from this Court to depose Roberto Rico-Duran for the purpose of securing testimony for anticipated FTCA litigation regarding the death of her son, Martin Gomez Arellano. This deposition is necessary because the potential litigation is delayed by the requirement that FTCA claims be first submitted as an administrative complaint (including the six-month timeline for the agency's response) and Mr. Rico-Duran's potential removal from the United States.

20. For these reasons, petitioner asks the Court to set this petition for hearing as soon as possible and, after the hearing, order the deposition of Mr. Roberto Rico Duran.

Respectfully submitted,

/s/ Efrén C. Olivares
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ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that the foregoing petition will be served on the United States of America, in accordance with Fed. R. Civ. P. 27 and 4(i), by delivering a copy to:

Customs and Border Protection
Office of Chief Legal Counsel
Scott K. Falk
1300 Pennsylvania Ave. NW
Washington, D.C. 20229

Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001
[In Re: Roberto Rico-Duran]

U.S. Attorney's Office (DHS – CBP)
One Shoreline Plaza South Tower
800 N. Shoreline Blvd., Ste. 500
Corpus Christi, TX 78401

I further certify that on a copy of Petitioner Maria Blanca Gomez Arellano's Verified Petition to Perpetuate Testimony will be served contemporaneously to the counsel of record in Criminal Action No. 2:17-CR-677-1, electronically by the CM/ECF system, which will automatically serve a notice of electronic filing, by e-mail or facsimile, on the following:

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/s/ Efrén C. Olivares
Efrén C. Olivares

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Attorney Jeanette Cantu-Bazar, attorney for Mr. Rico-Duran, regarding this Petition, and she stated that she is not opposed to the relief requested.

/s/ Efrén C. Olivares
Efrén C. Olivares